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FEE EXEMPT—Gov. Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ADRIAN RISKIN, an Individual; Petitioner, vs. CITY OF LOS ANGELES, a Charter City and Municipal Corporation; and DOES 1 THROUGH , INCLUSIVE, Respondents.	**CASE NO. 19STCP05266** [Department 85, Honorable James C. Chalfant.] **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITION FOR WRIT OF MANDATE** Date: November 11, 2020 Time: 1:30pm Dept.: 85 JUDGE: **Honorable James C. Chalfant**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to California Evidence Code Section 450 *et seq.*and *Kaufman & Broad Communities, Inc. v. Performance Plastering* (2005) 133 Cal. App. 4th 26 Respondent CITY OF LOS ANGELES, respectfully request the Court to take judicial notice of the following items when ruling on the Respondent's Opposition to Writ of Mandate filed concurrently herewith:

///

1. Assembly Bill 2799 (Third Reading, Amended May 23, 2000), a true and correct copy attached hereto as **Exhibit A**.

2. Assembly Bill No. 2799 (1999-2000 Regular Session, Amended June 22, 2000), a true and correct copy attached hereto as **Exhibit B**.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 452(c) provides that judicial notice may be taken of "...Official acts of the legislative, executive, and judicial departments ... of any state of the United States." Section 452(c) also provides that judicial notice may be taken of any document published, recorded, or filed by any executive department. [*See Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Moore v. Superior Court* (2004) 117 Cal.App.4th 401, 407 n.5; *Wolfe v. State Farm Casualty & Insurance Company* (1996) 46 Cal.App.4th 554, 567 n. 16: *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750; Hogen v. Valley Hospital (1983) 147 Cal.App.3d 119, 125]. Exhibits X through X are each documents published, recorded, and filed by the California legislature. They are also considered cognizable legislative history under *Kaufman & Broad Communities, Inc.* 133 Cal. App. 4th at 32.

DECLARATION OF BETHELWEL WILSON

I, Bethelwel Wilson, declare as follows

1. I am counsel for Respondent City of Los Angeles ("City") in the above-captioned action. I am over the age of eighteen and make this declaration based upon my own person knowledge. If called I could and would testify competently of the matters herein. I make this Declaration in support of City's Request for Judicial Notice.

2. Attached hereto as Exhibit A is a true and correct copy of Assembly Bill No. 2799, Third Reading, Amended May 23, 2000.

3. Attached hereto as Exhibit B is a true and correct copy of Assembly Bill No. 2799, 1999-2000 Regular Session, Amended June 22, 2000.

Dated: October 24, 2020

MICHAEL N. FEUER, City Attorney
VALERIE L. FLORES, Managing Assistant City Atty
BETHELWEL WILSON, Deputy City Attorney

By: Bethelwel Wilson
BETHELWEL WILSON

PROOF OF SERVICE -- (VIA VARIOUS METHODS)
CASE NO. 19STCP05266

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, Suite 800, Los Angeles, California 90012.

On October 24, 2020, I served the foregoing documents described as: **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITION FOR WRIT OF MANDATE**
on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows:

[ ] BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/ or

[ ] BY PERSONAL SERVICE – (☐) I delivered by hand, or (☐) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

[ ] BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.

[X] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct. Executed on October 24, 2020, at Los Angeles, California.

Bethelwel Wilson

EXHIBIT

A

BILL ANALYSIS

ASSEMBLY THIRD READING
AB 2799 (Shelley)
As Amended May 23, 2000
Majority vote

GOVERNMENTAL ORGANIZATION 12-2 APPROPRIATIONS 17-2

Ayes:	Wesson, Granlund, Battin, Briggs, Cardenas, Lempert, Longville, Machado, Maldonado, Strickland, Wiggins, Wright	Ayes:	Migden, Campbell Alquist, Aroner, Ashburn, Cedillo, Corbett, Davis, Kuehl, Maldonado, Papan, Romero, Shelley, Thomson, Wesson, Wiggins, Zettel
Nays:	Brewer, Floyd	Nays:	Ackerman, Brewer

SUMMARY : Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing. Specifically, this bill :

) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:

a) The agency must make the information available in any electronic format in which it holds the information;

b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies; and,

c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.

2)Requires an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the

request for public records was in writing.

3)Specifies that this requirements of this bill shall not be construed: a) to permit an agency to make information available only in an electronic format; nor, b) to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the Public Records Act (PRA)

4)Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW :

1)Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

2)Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

3)Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.

4)Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis:

1)Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2)Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS : PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that it currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Some remain concerned with this bill's requirement that public records be released in any electronic format that the agency uses to hold public records. They point out that state and local agencies retain massive databases which may include disclosable as well as nondisclosable public records. Those concerned claim that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that is more vulnerable to error and may result in the unintentional release of nondisclosable records. Additionally, some note that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release when such preparation is necessary. It is unclear how agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.

The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) of 1999 that was vetoed by the Governor. The Governor indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.

Analysis Prepared by : Richard Rios / G. O. / (916) 319-2531 FN: 0004727

EXHIBIT

B

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

AB 2799 A
Assembly Member Shelley B
As Amended June 22, 2000
Hearing Date: June 27, 2000 2
Government Code 7
GMO:cjt 9
9

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by this Committee last year,
AB 1099 (Shelley), and SB 1065 (Bowen).

(more)

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the

information would compromise the integrity of the record or any proprietary software in which it is maintained;

b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;

d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;

e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;

f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is

not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

a) the agency is required to provide information in any electronic format in which it holds the information; and

b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records

available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the

original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
b) If the public agency would be required to produce a

copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous

records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from

disclosure." Proponent indicated, however, that the Register "is not so na?ve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

9. Withdrawn opposition

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen),

see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)

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